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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,683	10/23/2003	William L. Lewis	521300/00001A	6632

7590 03/22/2005

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EXAMINER	
HALE, GLORIA M	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/691,683	LEWIS, WILLIAM L.	
	Examiner	Art Unit	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *Amendment of 1-3-05*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,7-16,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-16,19 and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 5, 6, 17 and 18 have been canceled. Claims 1-4, 7-16, 19 and 20 remain.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1-20 it is not clear as to whether the apparatus is being claimed in combination with a tree stand or just for use with a tree stand. The components of the tree stand (i.e.- the brackets) are still claimed in the dependent claims 2,14 and 15. In claims ,12 and 20 the removal of the recitation, the tree stand, does not correct the indefiniteness of the claims in that "the bracket" has still been claimed in claims 2, 14 and 15. The bracket is described in the specification on pages 4-5 as being part of the tree stand and not the apparatus.

Claim s 10,11 and 19 contains the trademark/trade name GORETEX and WINSTOPPER. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade

name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe polytetrafluroethylene and a laminate material and, accordingly, the identification/description is indefinite. Only generic terminology should be used in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemp (US 2,230,689).

Kemp discloses an apparatus (1,2,3- the bag/sack) wearable while in a tree stand which is generally a tubular length of material having an open end and a closed end including a fastener (cord, 8) which performs the intended use of "for securing the apparatus to the base of the stand" as broadly claimed. (See Kemp page 2, right col. Lines 7-11_). When rolled with cord (8) around the apparatus the tubular apparatus is securable to a tree stand as intended and claimed. The apparatus of Kemp is wearable

while the user stands in a tree stand. Nothing precludes the apparatus of Kemp to be worn in a tree stand. (See Figure 3, element 11 at the bottom).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (US 2,230,689) in view of Raines, Jr. et al (US 6,539,966).

Kemp discloses a tubular apparatus as broadly claimed and discussed above with a fastener, cord 8. (kemp, page 1, right col. Lines 7-11). However, Kemp does not specifically disclose a tree stand/hunting stand with a bracket. Raines discloses a well known tree/hunting stand (12) for use by a hunter and which are commonly used by a hunter and which are commonly used by hunter's to hide in and about trees to hide from game. Raines includes brackets (22,42) in figures 2 and 3, col. 3, line 53 – col. 4, line 17 which are commonly placed on tree stands as part of their construction. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to place or use the cord to place the rolled apparatus on the tree stand bracket to store the apparatus when not in use or needed by a user to keep warm. It is also well known to construct such ties of nylon for durability.

Claims 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Anderson (US 1,915,044).

Kemp discloses the invention substantially as claimed. However, Kemp does not disclose the elastic band at the open end, a protective mat at a closed end and pockets. Anderson discloses a similar warming bag with the elastic band about the open end (7), pockets (8) and a protective mat (6). (See Anderson, figure 1 and lines 42-51).

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Anderson as applied to claims 7-9, 12 and 13 above, and further in view of Raines(US 6,539,966).

Kemp and Anderson disclose the invention substantially as claimed with a cord fastener 8 (See Kemp, page 1, rt. Col. Lines 7-11) except for a well known tree stand structure including the claimed brackets. Raines discloses a tree/hunting stand (12) for use by a hunter and which are commonly used by hunter's to hide from game in and about trees while hunting. Raines includes brackets 22,42 in figures 2 and 3, col. 3, line 52- col. 4, line 17 which are commonly placed on tree/hunting stands as part of their construction. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to place or use the cord to attach the rolled apparatus cover on the tree stand bracket to store the apparatus when not in use or needed by a user to keep warm. The cord 8 of Kemp is attachable about a tree hunting stand bracket as broadly claimed.

Claims 10,11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Hutto (US 5,630,439) or Campmor New Year 200 Catalog, page 41, Cherry Tree NYLON/POLARTEC SNOWSUIT.

Kemp discloses the invention substantially as claimed except for the claimed materials. The Examiner takes Official Notice that it is well known to construct protective, weatherproof/resistant garments and protective gear of GORETEX such as disclosed by Hutto (col. 2, line 49) to protect a wearer from wet, damp and cold weather or of Nylon and POLARTEC fleece or layered combinations of those materials to achieve the desired warmth and protection from the elements. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the protective cover of Kemp to construct it of any well known protective materials to achieve a desired level of protection such as making it of GORETEX, POLARTEC fleece and/or nylon or combinations thereof.

Response to Arguments

Applicant's arguments filed 1-3-05 have been fully considered but they are not persuasive.

Applicant is arguing more than what has been claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fastener as being on the exact bottom surface of the closed end) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In regard to applicant's remarks in regard to the "fastener", the claim does not specifically claim the fastener as being directly permanently attached to the outer surface of the closed end for direct contact with the floor of the tree stand as is the case of applicant's invention. Only a general fastener has been claimed. Kemp discloses the claimed fastener and as being within the recitation "closed end includes a fastener" since in figure 3 a button 11 which is connected to the cord 8 is shown at the bottom end. The intended use limitation has not been given any patentable weight since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). The bracket is described in the specification on pages 4-5 as being on the tree stand. Therefore, claim 2 is now confusing and still indefinite in that a tree stand part, the bracket, is still being claimed yet the apparatus is not being claimed in combination with the tree stand. The cord on the apparatus of Kemp can still be attached to a base of a tree stand by tying or wrapping whether it is rolled up or unrolled and occupied. The claim does not state that a fastener is located at the bottom closed end outer surface of the apparatus as argued. The specific structure of the invention must be claimed. Support for such language must be included in the specification without the addition of new matter. The fastener as being permanently attached to an

outer surface of the closed end for direct contact to the floor of a tree stand has not been claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria Hale
Primary Examiner
Art Unit 3765

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